IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

CRL.A.No. 809 of 2005()

AGAINST THE JUDGEMENT/ORDER IN CRLP.47/2005 Dated 25/01/2005 CC.43/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, (SPECIAL COURT FOR MARK LIST CASES), TRIVANDRUM

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APPELLANT: COMPLAINANT:

BIDULAL, T.C.7/181,
NARAYANA SADANAM, KANJIRAMPARA,
THIRUVANANTHAPURAM.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS: ACCUSED:

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1. ALEX C., S/O. CHELLAPPAN,
T.C.12/1660, VALSALAN ROAD,
PUNAYIDAM, KUNNUKUZHY, THIRUVANANTHAPURAM.

2. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.DENIZEN KOMATH
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 809 of 2005

Dated this the 10th April, 2007.

J U D G M E N T

The complainant in C.C.No.43/2002, on the file of the Judicial First Class Magistrate Court-V, (Special Court for Mark List Cases), Thiruvananthapuram, is the appellant. He preferred a complaint under Section 138 of the Negotiable Instruments Act, against the first respondent, the accused. The matter was posted for evidence on 18.6.2003. The complainant was absent. Therefore, the complaint dismissed, and the accused acquitted. The same is under challenge through this appeal by the complainant, after obtaining leave of this Court.

2. The learned counsel appearing for the appellant submits that when the case was posted on 8.4.2003, the complainant was present, but the accused was absent. A non bailable warrant was issued against the accused, and the case was adjourned to 22.4.2003, and on that date, the same was further adjourned to 22.5.2003, 4.6.2003, and then to 18.6.2003. Due to the ill-health of the complainant, appellant, he had preferred an application for condoning his absence on 18.6.2003. But for want of medical document along

with the application, the same was rejected, and the complaint was dismissed holding that the complaint was posted for evidence, as the last chance.

3. After hearing both sides, and considering the facts on record, I find that it is a fit case, where an opportunity be given to both sides to raise their respective contentions, by adducing evidence. Hence, I set aside the impugned order, dated 18.6.2003, and restore C.C.No.43/2002 to the file of the Judicial First Class Magistrate Court-V, (Special Court for Mark List Cases), Thiruvananthapuram.

4. The parties shall appear before the court below on 24.5.2007. The learned Magistrate shall dispose of the matter, giving priority, and in any case, within four months from the date of appearance of the parties.

The Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.